

STATE OF MONTANA
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

LICENSING REQUIREMENTS
FOR CHILD DAY CARE CENTERS

Department of Public Health & Human Services
QAD - Licensure Bureau - Child Care Licensing
PO Box 202953
Helena Montana 59620-2953

(406) 444-7770 or (406) 444-2012

The following rules are the minimum requirements that must be met by day care facilities.

If you have questions about or do not understand any of the regulations we will be glad to assist you.

Other Rules Governing Day Care Centers

Fire Prevention and Investigation Bureau @
444-2050 Rules Regarding Day Care Centers (23.7.108 - 23.7.110)
Included in this rulebook.

Health Policy and Services Division @
444-2408 Rules Regarding Day Care Centers (37.95.201 - 37.95.227)
Included in this rulebook.

Revised June 2006

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GENERAL REQUIREMENTS

37.95.102 DEFINITIONS

- (1) **"Aide"** means a facility staff person who carries out assigned care-giving tasks under the direct supervision of a primary care-giver or director.
- (2) **"Care-giver"** means a licensee, registrant, employee, aide, or volunteer who is responsible for the direct care and supervision of children in a day care facility.
- (3) **"CPR"** means cardio-pulmonary resuscitation.
- (4) **"Day care" or "child care"** means care for children provided by an adult, other than a parent of the children or other person living with the children as a parent, on a regular basis for daily periods of less than 24 hours, whether that care is for daytime or nighttime hours. In addition to the definitional language found at 52-2-703, MCA, the term also means care to a child up to the age of 13 years except as indicated otherwise in these rules. The term does not include care by a relative, unless registration or licensure as a day care facility is required to receive payments as provided in 52-2-713, MCA.
- (5) **"Day care center"** means an out-of-home place in which day care is provided to 13 or more children on a regular basis.
- (6) **"Day care facility"** means a person, association or place, incorporated or unincorporated, that provides day care on a regular basis or a place licensed or registered to provide day care on an irregular basis for children suffering from illness. It includes a family day care home, a day care center, a group day care home, or a facility providing care in a child's home for the purpose of meeting registration requirements for the receipt of payments as provided in 52-2-713, MCA. The term does not include:
 - (a) A person who limits care to children who are related to the person by blood or marriage or under the person's legal guardianship, unless registration or licensure as a day care facility is required to receive payments as provided in 52-2-713, MCA; or
 - (b) Any group facility established chiefly for educational purposes that limits its services to children who are 3 years of age or older. In addition to the previous definitional language found at 52-2-703, MCA, the term also does not include a person caring for the children of a single family, or a person, not receiving any type of state payment for day care, who is caring for children in the children's own home. In addition to the children being cared for in their own home, there may be no more than 2 children from another home being cared for by the same provider.
- (7) **"Delayed renewal application"** means a renewal application which is submitted to the department prior to the certificate expiration date, but is submitted in an incomplete manner, resulting in a delay in the issuance of the certificate.
- (8) **"Department"** means the department of public health and human services provided for in 2-15-2201, MCA.
- (9) **"Director"** means the person designated on the center application or otherwise by written notice to the department as the person responsible for the daily operation of a day care center. A director is also responsible for implementing appropriate child development principles and knowledge of family relationships in providing daily care to the children cared for in the facility.
- (10) **"DT vaccine"** means a vaccine containing a combination of diphtheria and tetanus toxoids for pediatric use.
- (11) **"DTP vaccine"** means a vaccine containing diphtheria and tetanus toxoids and pertussis (whooping cough) vaccine combined, including a vaccine referred to as DTaP, diphtheria, tetanus toxoid and acellular pertussis vaccine combined.
- (12) **"Family day care home"** means a private residence in which day care is provided to 3 to 6 children on a regular basis. In addition to the previous definitional language found at 52-2-703, MCA, the term also means, a day care facility providing care to no more than 3 children under 2 years of age unless care is provided for infants only. For facilities providing care only for infants, family day care home means a place in which supplemental parental care is provided for up to 4 infants. No other children shall be in attendance.

- (13) **"Group day care home"** means a private residence or other structure in which day care is provided to 7 to 12 children on a regular basis. In addition to the previous definitional language found at 52-2-703, MCA, the term also means a day care facility providing care to 7 to 12 children with no more than 6 children under 2 years of age, unless care is provided for infants only. For facilities providing care only for infants, group day care home means a place in which supplemental parental care is provided for up to 8 infants. No other children shall be in attendance.
- (a) Facilities caring for infants shall maintain a staff/infant ratio of 1 caregiver for each 4 infants in attendance.
- (14) **"Harm to children"** means harm to a child's health or welfare as defined in 41-3-102, MCA.
- (15) **"Health care provider"** means a licensed physician, a physician assistant-certified, a nurse practitioner, a registered nurse, or a naturopathic physician practicing within the scope of the license.
- (16) **"Hib vaccine"** means a vaccine immunizing against infection by Haemophilus influenza type B disease.
- (17) **"Infant"** means a child under the age of 24 months of age.
- (18) **"Lapsed registration/license"** means
- (a) an application for registration/licensing renewal which is received by the department after the registration/licensing expiration date.;
- (b) an application which is incomplete and results in a break-in-license span; or
- (c) any break in the license/registration span resulting from a lapse of required insurance or resulting from a failure to comply with another licensure requirement.
- (19) **"License"** means a written document issued by the department that the license holder has complied with the applicable standards and rules for day care centers.
- (20) **"Local health authority"** means a local health officer, local department of health, or local board of health.
- (21) **"MMR vaccine"** means a live virus vaccine containing a combination of measles, mumps, and rubella vaccine.
- (22) **"Night care"** means care provided for a child between the hours of 7 p.m. and 7 a.m. during which the parent(s) desires a child to sleep.
- (23) **"Overlap care"** means care provided at a day care facility for children age 3 and older for the times before and after school and approved by the department for a designated period of time not to exceed 3 hours when the number of children in care may exceed the number of children registered for care on the registration certificate.
- (24) **"Nonprovider staff"** means a staff person of a day care facility who does not participate in a care-giving role.
- (25) **"Nonprescription medication"** means any over the counter medication that is not specifically prescribed by a physician, but is recommended by a health care provider or a parent or guardian for a specific child.
- (26) **"Physician"** means a person licensed to practice medicine under Title 37, chapter 3, MCA.
- (27) **"Preschooler"** means a child between 36 months of age and the age the child will be when he or she initially enters a public or private school system.
- (28) **"Portable wading pool"** means a structure, which contains water, is used for aquatic activities, and is less than 24 inches high.
- (29) **"Prescription medication"** means medication prescribed by a licensed health care provider for a specific person which may only be obtained through a pharmacy by prescription.
- (30) **"Primary Caregiver"** means a facility staff person who meets the requirements as outlined in 37.95.622 and who regularly provides direct care to the children who attend the day care facility.
- (31) **"Probationary license"** means a day care facility license or registration certificate whose status has been reduced for a specified period of time for a licensing violation and which will be reinstated to regular status upon successful completion of and compliance with remedial measures identified by the department to address specific deficiencies.
- (32) **"Provider"** means the applicant for license or registration, the licensee or registrant.
- (33) **"Provisional certificate"** means a registration or license status that is given to a day care provider, if the provider does not meet all the registration or license requirements but is attempting to comply. This status can be granted for a period of up to 3 months. A second 3 month certificate may be issued at the discretion of the day care licensing program manager.

- (34) **"Public sewage system"** means a system of collection, transportation, treatment, or disposal of sewage that is designed to serve or serves 15 or more families or 25 or more persons for a period of at least 60 days out of the calendar year.
- (35) **"Public water supply system"** means a system for the provision of water for human consumption from any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that is designed to serve or serves 15 or more families or 25 or more persons daily or has at least 15 service connections at least 60 days out of the calendar year.
- (36) **"Registrant"** means the holder of a registration certificate issued by the department in accordance with the provisions of Title 52, chapter 2, part 7, MCA.
- (37) **"Registration"** means the process whereby the department maintains a record of all family day care homes and group day care homes, prescribes standards, promulgates rules, and requires the operator of a family day care home or a group day care home to certify compliance with the prescribed standards and promulgated rules.
- (38) **"Registration certificate"** means a written instrument issued by the department to publicly document that the certificate holder has, in writing, certified to the department compliance with this rule and the applicable standards for family day care home and group day care homes.
- (39) **"Regular certificate"** means a license status that is given upon determination that the day care provider is meeting all requirements set forth for family day care homes, or group day care homes, or day care centers.
- (40) **"Regular basis"** means providing day care to children of separate families for any daily periods of less than 24 hours and within three or more consecutive weeks. In addition to the previous definitional language found at 52-2-703, MCA, the term also means the child must be in attendance four or more days a week for six hours a day or more.
- (41) **"Related by blood or marriage"** means the status of a child who is the son, daughter, brother, sister, first cousin, nephew, niece, or grandchild of a person providing child care.
(a) The term includes the status of a child described above in a step or adoptive relationship.
- (42) **"Remote means of egress"** means escape routes in the day care which consist of two exits whose distance apart is equal to or greater than one half the diagonal distance of the space occupied to minimize the possibility that both exits will be blocked off by a fire or other emergency condition.
- (43) **"Renewal registration/license"** means a registration or license certificate that has reached its expiration date and the holder of that registration/license desires to renew or continue operations allowed by the registration/license.
- (44) **"Restricted certificate"** means a restricted license or registration status assigned when it has been determined that the provider is unable to meet certain specific requirement criteria, but the provider is complying with an agreed upon plan of correction.
- (45) **"School-age child"** means a person who is at least 5 years of age and who is younger than 13 years of age or a person with special needs, as defined by the department, who is under 18 years of age or is 18 years of age and a full time student expected to complete an educational program by 19 years of age.
- (46) **"Substitute"** means any person not regularly employed by a child care facility who temporarily takes the place of an approved staff person, other than the director.
- (47) **"Supervision"** means the provider and all care-givers shall be able to see or hear the children at all times.
- (48) **"Supplemental parental care"** means the provision of day care by an adult other than a parent, guardian, or person in loco parent's on a regular basis for daily periods of less than 24 hours.
- (49) **"Toddler"** means a child who is 24 months of age to 36 months of age.
- (50) **"Vaccine"** means one of the following:
(a) If administered in the United States, an immunizing agent approved by the bureau of biologics, food and drug administration, United States public health services; or
(b) If administered outside the United States, an immunizing agent administered by a person licensed to practice medicine in the country where it is administered or by an agent of the principal public health agency of that country and properly documented as required by ARM 16.28.704.
- (51) **"Varicella"** means an attenuated, live virus vaccine to prevent chicken pox disease.

(53) **"Volunteer"** means any person who enters into service voluntarily, but who when in service is subject to discipline and regulations like any other employee.

37.95.104 DETERMINATION OF NEED FOR LICENSE OR REGISTRATION: COUNTING PROVIDER'S OWN CHILDREN

- (1) The department shall, upon request or as its own action, make an initial count of children to determine whether an applicant or a provider is required to obtain a license or registration from the department.
- (2) Children of the provider's own household or children who are present in the home or facility only when their own parent is also present shall not be counted in determining whether supplemental parental care is being provided to other children.
- (3) If the initial count determines that supplemental parental care is being provided to three or more children, not counting those listed in (2), the provider shall be licensed or registered as a day care facility

37.95.105 DETERMINATION OF NUMBER OF CHILDREN UNDER CARE: COUNTING PROVIDER'S AND OTHER CHILDREN

- (1) The department shall make a separate count of children, apart from the initial licensure or registration determination count, to determine the type of license or registration required. The licensure or registration type count shall not include the provider's own children age six or over who attend school full time. The licensure or registration type count shall include all children, including the provider's own children under age six, who are present during hours when supplemental parental care is provided.
- (2) The licensure or registration count shall determine:
 - (a) Whether the provider must be registered as a family day care home or group day care home, or licensed as a day care center;
 - (b) Whether the day care facility is in compliance with applicable staff to child ratios;
 - (c) Whether sufficient space is provided; and
 - (d) Whether any other safety, health or program requirements or registration or licensure restriction requiring counting of children is affected or violated

37.95.106 DAY CARE FACILITIES, REGISTRATION OR LICENSING

- (1) Any individual, agency, or group may apply for a license to operate a day care center or may apply for a registration certificate to operate a family day care home or group day care home. Applications may be obtained from the Department of Public Health and Human Services, Quality Assurance Division, Licensure Bureau, P.O. Box 202953, 2401 Colonial Drive, Helena, MT 59620-2953.
- (2) Applications for a license or registration certificate by Indians residing on Indian reservations must follow the requirements of 52-2-722, MCA.
- (3) Before a regular one year license without provisions or restrictions may be granted, the following shall be submitted by the applicant at the time of application and annually thereafter:
 - (a) An annual approved inspection report from the state fire marshal or the fire marshal's official designee indicating the fire safety rules have been met;
 - (b) An annual approved inspection report from public health authorities certifying the satisfactory completion of training or a certificate of approval following inspection by local health authorities in accordance with ARM 37.95.128, 37.95.139, 37.95.140 and 37.95.205 through 37.95.227;
 - (c) Proof of current fire and liability insurance coverage for the day care center;
 - (d) A schedule of daily activities;
 - (e) A sample weekly menu;
 - (f) A DPHHS personal statement of health for licensure form for each care-giver, aide, or volunteer who has direct contact with the children in care;
 - (g) A criminal background and child and adult protective services check on the provider or staff, including care-givers, aides, volunteers, kitchen and custodial staff, and persons over age 18 residing in the day care facility prior to any services being provided by an individual covered by this requirement;

- (h) A list of each staff person's legal name, position, age, residential and mailing addresses, and telephone numbers;
 - (I) A written fire and emergency evacuation plan for all buildings used for child care services. For license renewal there must also be documentation of 8 annual emergency evacuation practices, including when each drill took place and how long it took to evacuate everyone from the facility; and
 - (j) Such other information, which may be requested by the department to determine compliance with the licensing requirements.
- (4) Before a regular one year registration certificate may be granted, the following shall be submitted by the applicant at the time of application and annually thereafter:
- (a) A DPHHS personal statement of health form for each care-giver, aide, or volunteer who has direct contact with the children in care;
 - (b) Proof of current fire and liability insurance coverage for the provision of day care in the home;
 - (c) A criminal background and child and adult protective services check on the provider or staff, including care-givers, aides, volunteers, kitchen and custodial staff, and persons over age 18 residing in the day care facility prior to any services being provided by an individual covered by this requirement;
 - (d) A written fire and emergency evacuation plan. For registration certificate renewal there must also be documentation of 8 annual emergency evacuation practices, including when each drill took place and how long it took to evacuate everyone from the facility; and
 - (e) Any such other information, which may be requested by the department.
- (5) Applications for renewal shall be made by the provider at least 30 days prior to expiration of the license or registration certificate.
- (6) A day care facility may not provide care for more than the number of children permitted at any one time by its day care license or registration certificate.
- (7) Any individual, group or other agency may request that the department determine whether a facility should be licensed or registered according to law. Referral may be either in writing or by telephone.

37.95.108 DAY CARE FACILITIES, REGISTRATION AND LICENSING PROCEDURES

- (1) The department may investigate and inspect the conditions and qualifications of any day care facility or any person seeking or holding a license or registration.
- (2) A family day care home or group day care home must be registered. A day care center must be licensed.
- (3) Licensing, registration and inspection of family day care homes, group day care homes and centers are the responsibility of the department with the exception of the required local health authority and state fire marshal inspections. Licensing and issuing certificates of registration are delegated to the supervisor of the day care licensing program.
- (4) A registrant or licensee shall not discriminate in child admissions or employment of staff on the basis of race, sex, religion, creed, color, national origin, or disability. Any determination of discrimination will be made by the Montana human rights commission.
- (5) Within 30 days of receipt of the signed and completed application forms, the department will evaluate the application for registration or licensure based upon the requirements found in these rules.
 - (a) A prospective family day care home or group day care home that meets all requirements as evidenced by the application shall be issued a registration certificate. The registration certificate may be provisional, restricted, or regular.
 - (b) A prospective day care center will be visited and the program and facility inspected by a licensing worker within 30 days of receipt of the completed application. If the applicant meets the requirements for licensure the department will issue a license to the applicant. The license may be either provisional or regular.
- (6) A provisional registration certificate or license may be issued for a period of up to 3 months when the day care facility does not meet all of the requirements if the facility is attempting to comply. A second 3 month provisional certificate or license may be issued in special circumstances, at the discretion of the program supervisor, the total length of time of issuance not to exceed 6 months.

- (a) A plan for full compliance with requirements for registration or licensure must be submitted by the day care facility to the department before issuance of a provisional certificate or license.
 - (b) Written notification of the granting of a provisional certificate or license by the department must be made to the licensee, or registrant specifying the reason, duration and conditions for continuing or terminating the provisional certificate or license.
 - (c) The department may not issue a provisional license to any day care center which has not been approved by the state fire marshal and the public health authorities.
 - (d) The department may not issue a provisional certificate or license to any day care facility, which does not have current public liability insurance and fire insurance.
- (7) Regular registration certificates and licenses are issued from the department's quality assurance division licensure bureau for periods up to 3 years.
- (a) A three year license or registration may be offered to any provider who has not received a notice of deficiency during a current on site inspection.
 - (b) A two year license/registration may be offered to a provider who has five or fewer deficiencies in areas of the rules that the department determines do not significantly affect or threaten the health and safety of any child attending the facility.
 - (c) A provider who has been in operation less than one year is not eligible for an extended license/registration.
- (8) The department, after written notice to the applicant, licensee or registrant, may deny, suspend, restrict, revoke or reduce to a provisional status a registration certificate or license upon finding that the applicant has not met the requirements for licensure or registration set forth in these rules.

37.95.115 DAY CARE PARENT INFORMATION

- (1) The following written information shall be made available to all parents:
- (a) A typical daily schedule of activities;
 - (b) Admission requirements, enrollment procedures, hours of operation;
 - (c) Frequency and type of meals and snacks served;
 - (d) Fees and payment plan;
 - (e) Regulations concerning sick children;
 - (f) Transportation and trip arrangements;
 - (g) Discipline policies; and
 - (h) Department day care licensing requirements.
- (2) Day care facility shall post a copy of the facility registration or license and the phone number of state and local quality assurance division offices in a conspicuous place. Parents should be encouraged to contact the division if they have questions regarding the license or the day care regulations.
- (3) The licensee or registrant shall allow custodial and non-custodial parental access as well as access by legal guardians to the facility at any time during which child day care services are provided, unless there is a current court order preventing parent-child contact.

37.95.117 DAY CARE FACILITIES, JOINT PROGRAMS

- (1) Any day care facility which operates a day care program in connection with another non-day care program on the same premises must have separate staff and separate space for each program. However, staff and space may be shared for janitorial, maintenance, cooking, or other support services.
- (2) Children attending the facility for day care shall not come in contact with other persons who are receiving care in the facility unless the provider can prove to the department's satisfaction that those persons will not pose any threat to the health, safety and well-being of the children in day care.
- (3) If multiple programs, including multiple day care programs or facilities in the same building, increase the number of people regularly in the building to more than 12 individuals, all fire, safety and sanitation requirements which may be impacted must be complied with by the day care facility.

- (a) Multiple day care group homes which are currently operating under a "double group" registration within a single structure will have 3 years or until September 30, 2003, to either upgrade to center status and meet all center requirements, or relinquish one group registration and limit the number of children accordingly.
- (4) Persons, corporations or organizations may be licensed or registered for more than one day care facility if facility sites, staff, and space are completely separate from one another.
 - (a) If the day care facility is housed in a private single-family living structure, the structure can only obtain one registration or license.
 - (b) If the multiple program day care facility is in a non-residential structure, and is owned by the same entity or person it will be licensed as a center and will be required to meet all center regulations.
 - (c) If more than one day care program exists in one retail or commercial structure, and there are separate owners or entities of each program, the department will grant individual registrations or licenses.
 - (d) If the day care facility is contained in a multi-family structure, such as an apartment building, the structure will be allowed to house multiple day care facilities that meet the requirements of (1) and (2) above.
 - (e) If the facility is licensed or registered as a day care facility, but also serves as a foster care home, the department's child and family services (CFS) regional administrator and quality assurance division (QAD) must approve the dual license or registration.

37.95.121 SAFETY REQUIREMENTS

- (1) Cleaning materials, flammable liquids, detergents, aerosol cans, and and toxic materials must be kept in their original containers and in a place inaccessible to children. They must be used in such a way that will not contaminate play surfaces, food, food preparation areas, or constitute a hazard to the children.
- (2) No extension cord will be used as permanent wiring. All appliances, lamp cords and exposed light sockets must be suitably protected to prevent electrocution.
- (3) Any pet or animal, present at the facility, indoors or outdoors, must be in good health, show no evidence of carrying disease, and be a friendly companion of the children. The provider is responsible for maintaining the animal's vaccinations and vaccination records. These records must be made available to the department upon request. The provider must make reasonable efforts to keep stray animals off the premises.
- (4) Guns must be kept in locked storage. Ammunition must be kept in locked storage separate from the gun.
- (5) The indoor and outdoor play areas must be clean, reasonably neat, and free from accumulation of dirt, rubbish, or other health hazards.
- (6) Any outdoor play area must be maintained free from hazards such as wells, machinery and animal waste. If any part of the play area is adjacent to a busy roadway, drainage or irrigation ditch, stream, large holes, or other hazardous areas, the play area must be enclosed with a fence in good repair that is at least 4 feet high without any holes or spaces greater than 4 inches in diameter or natural barriers to restrict children from these areas.
 - (a) Outdoor play areas shall be designed so that all parts are always visible and easily supervised by staff.
- (7) Toys, play equipment, and any other equipment used by the children must be of substantial construction and free from rough edges, sharp corners, splinters, unguarded ladders on slides, and must be kept in good repair and well maintained.
- (8) Toys and objects with a diameter of less than 1 inch (2.5 centimeters), objects with removable parts that have a diameter of less than 1 inch (2.5 centimeters), plastic bags, styrofoam objects, and balloons must not be accessible to children who are still placing objects in their mouths.
- (9) Outdoor equipment, such as climbing apparatus, slides, and swings, must be anchored firmly, and placed in a safe location according to manufacturer's instructions. Recommended ground covers under these items include sand, fine gravel or woodchips with a depth of the ground cover being at least 6 inches.
- (10) Trampolines are prohibited for use by children in care. Trampolines on facility premises must be inaccessible to children in care.
- (11) The Emergency Montana Poison Control Center number, 1 (800) 222-1222 must be posted at all telephone locations at the day care facility.
- (12) Use of waterbeds, water mattresses, gel pads, or sheepskin covers for children's sleeping surface is prohibited.

- (13) In an emergency, all occupants must be able to escape from the facility, whether a home or building, in a safe and timely manner.
- (a) All facilities must have two accessible exits on each level. The two exits must be far enough apart from one another to avoid having them both blocked by fire and smoke. Aisle ways and corridors leading to the exits must be kept clear of obstructions.
 - (b) If the day care provider chooses to lock the facility door to prevent unauthorized access to the facility or to prevent a child from escaping, the facility shall have no lock or fastening device which prevents free escape from the interior.
 - (c) The locking device must not require a key, a tool, or special knowledge or effort to open from the inside.
 - (d) The locked door must be easily opened with one motion from the inside of the facility.
 - (e) Installation of locking devices may not prohibit access by parents. A facility may not utilize locking devices in a manner to prevent unannounced access by authorized individuals, including parents. If a lock is used, the provider must make adequate provision to allow authorized persons unannounced access to the facility and must provide authorized personnel including parents with information on how to gain access.
 - (f) Exit doors, windows, and their opening hardware must be maintained in good repair at all times.

37.95.126 SMOKE-FREE ENVIRONMENT

- (1) Children shall be afforded a smoke-free environment during all day care hours, whether indoors or outdoors.
- (2) The registrant (...) shall ensure that no smoking occurs within the facility while children are in care.

37.95.127 DAY CARE FACILITIES SWIMMING

- (1) Children may not be allowed to use a swimming pool, unless it and the surrounding area are constructed and operated in accordance with ARM 37.95.227.
- (2) Portable wading pools, as defined in ARM 37.95.102, are permitted in day care facilities.
 - (a) When children are utilizing a portable wading pool, an approved caregiver shall always be present and actively supervising.
 - (b) If the portable wading pool is filled with water and will sit unused for any period of time prior to use by day care children, the caregiver shall equip the wading pool with a barrier to prevent a young child's unsupervised access.
 - (i) A barrier refers to a fence, a wall, or gate or screen that locks.
 - (c) Portable wading pools must be emptied after the day's use and sanitized.
- (3) Children shall not be permitted in hot tubs, spas, or saunas.
 - (a) Hot tubs must have bolted and securely locked covers.
 - (b) Spas and saunas must be inaccessible to children.
- (4) Bathtubs, buckets and other water receptacles shall be emptied immediately after use.
- (5) Ponds shall be fenced to prevent access to children.
- (6) All in ground and above ground swimming pools located in the outdoor play space area or accessible to children must be fenced with a locked gate. The fence shall be at least 5 feet high and come within 3 □ inches of the ground. The fence shall be constructed to discourage climbing. Exit and entrance points shall have self-closing, positive latching gates with locking devices a minimum of 55 inches from the ground. The child care building wall shall not constitute one side of the fence unless there are no openings in the wall. When children are swimming, supervision must include at all times at least one person currently certified in red cross advanced life saving or an equivalent certificate by a recognized organization. This person shall not be counted in the staff-child ratio. One person with a life guard training certificate is required for each group of 25 or fewer children.
 - (a) Each swimming pool more than 6 feet in width, length or diameter shall be provided with a ring buoy and rope and either a throw line or a shepherd's hook. Such equipment shall be of sufficient length to reach the center of the pool from the edge of the pool and shall be safely and conveniently stored for immediate access.
 - (b) All pool pumping equipment shall be screened to prevent access and injury.
- (7) Swimming pool safety rules shall be posted near the swimming pool.

- (8) The staff-child ratio shall be maintained whenever children participate in swimming activities, including swimming instruction.

37.95.132 TRANSPORTATION

- (1) The provider shall obtain written consent from the parent(s) for any transportation provided.
- (2) The operator of the vehicle shall be at least 18 years of age and possess a valid driver's license.
- (3) The passenger doors on the vehicle must be locked whenever the vehicle is in motion.
- (4) With the exception of public transportation that is not required by law to be equipped with safety restraints, no vehicle shall begin moving until all children are seated and secured in age and weight appropriate safety restraints, which must remain fastened at all times the vehicle is in motion. Each child shall have a safety restraint. Children shall not share a safety seat or a safety restraint.
- (5) Children under four years of age may not be transported in a vehicle which does not provide age appropriate safety restraints or in a vehicle which cannot accommodate a car seat or a booster seat in a manner that conforms with National Highway Transportation Safety Administration recommendations.
- (6) Children shall never be left unattended in a vehicle.
- (7) The back of pickup trucks must not be used to transport children.
- (8) Facilities providing transportation for children under six years of age or children six years of age but weighing less than 60 pounds shall comply with the following requirements:
 - (a) All vehicles shall be equipped with children's car seats or booster seats that meet federal Department of Transportation recommendations for the age and weight of the child being transported;
 - (b) Car seats or booster seats shall be fastened securely to the seat or to the floor of the vehicle. Children shall be secured with safety belts which are secured within the vehicle according to factory assembly;
 - (c) There shall be no more than one child in each car seat;
 - (d) There shall be one adult in addition to the driver for each four infants being transported and
 - (e) An adult shall accompany each child to and from the vehicle to the child's home or the home authorized by the parents to receive the child.
- (9) No child shall be left unattended in a vehicle.

37.95.139 DAY CARE FACILITIES, HEALTH CARE REQUIREMENTS

- (1) The parent(s) of each child admitted to the day care facility shall provide the name of the physician or health care facility the parent wishes to have called in case of an emergency.
- (2) If, while in care, a child becomes ill or is suspected of having a communicable disease reportable to the health department while in care, the parent shall be notified by the provider. The parent is responsible for arranging to have the child taken home.
- (3) The director, owner, manager, or person in charge of the day care facility must designate a staff member to check daily the health status of each child immediately upon that child's entry into the day care facility, and to exclude any child showing symptoms of illness, under the following guidelines:
 - (a) Children must be without fever of 101°F or greater for 24 hours before they return to the day care facility, except that children with immunization-related fevers need not be excluded if they are able to participate in the routine of the day care facility.
 - (b) Children must be without vomiting and diarrhea for 24 hours before they return to the day care facility. Vomiting includes 2 or more episodes in the previous 24 hours. Diarrhea is defined as an increased number of stools, increased water in the stool, and/or decreased form to the stool that cannot be contained by a diaper or clothing;
 - (c) Children with any of the bacterial infections listed below must be treated with antibiotics for 24 hours before they return to the day care center:
 - (i) Strep throat;
 - (ii) Scarlet fever;
 - (iii) Impetigo;
 - (iv) Bacterial conjunctivitis (pinkeye); and
 - (v) Skin infections such as draining burn or infected wounds or hangnails;

- (d) Generalized rashes, including those covering multiple parts of the body, must be evaluated by a health care provider to determine their cause before the child can return to the day care facility;
- (e) Children with chickenpox may not be admitted to the day care facility until their sores dry up, which usually takes 5 to 7 days. Day care providers must not purposefully expose susceptible children to chickenpox, even with the permission of the susceptible child's parents;
- (f) Children who are jaundiced must be excluded until a health care provider evaluates the cause and authorizes the child to return to the day care facility;
- (g) Children with symptoms of severe illness, such as uncontrolled coughing, breathing difficulty or wheezing, stiff neck, irritability, poor food or fluid intake, or a seizure, must be evaluated by a health care provider before they may return to the day care facility;
- (h) A child need not be excluded for a discharge from the nose which is not accompanied by a fever.
- (4) If a child develops symptoms of illness while at the day care facility and after the parent or guardian has left, the day care facility must do the following:
 - (a) Isolate the child immediately from other children in a room or area segregated for that purpose;
 - (b) Contact and inform the parent or guardian as soon as possible about the illness and request the parent or guardian to pick up the child;
 - (c) Report each case of suspected communicable disease the same day by telephone to the local health authority, or as soon as possible thereafter if no contact can be made the same day.
- (5) When a child is absent, the day care provider shall obtain the reasons so the interest of the other children may be properly protected. If a reportable communicable disease is suspected, the provider shall inform a health officer. No child shall be re-admitted after an absence until the reason for the absence is known and there is assurance that the child's return will not harm that child or the other children. Disease charts that identify the reportable diseases are available from the department.
- (6) The day care facility may readmit a child excluded for illness whenever, in its discretion:
 - (a) The child either shows no symptoms of illness;
 - (b) The child has been free of fever, vomiting, or diarrhea for 24 hours; or
 - (c) The child has been on antibiotics for at least 24 hours for bacterial infections.
- (7) The parent or guardian may also provide the day care facility with a signed certification of health from a licensed physician, except that the following restrictions must be followed:
 - (a) If a child is excluded for shigellosis or salmonella, the child may not be readmitted until the child has no diarrhea or fever, the child's parent or guardian produces documentation that 2 stools, taken at least 24 hours apart, are negative for shigellosis or salmonella, and the local health authority has given written approval for the child to be readmitted to the day care facility;
 - (b) If a child is excluded for hepatitis A virus infection, the child shall remain excluded until either 1 week after onset of illness or jaundice, if the symptoms are mild, or until immune globulin has been administered to appropriate children and staff in the day care facility as directed by the local health authority.

37.95.140 IMMUNIZATION

(1) Before a child under the age of five may attend a Montana day care facility, that facility must be provided with the documentation required by (4) that the child has been immunized as required for the child's age group against measles, rubella, mumps, poliomyelitis, diphtheria, pertussis (whooping cough), tetanus, and Haemophilus influenza type B, unless the child qualifies for conditional attendance in accordance with (9):

<u>Age at Entry</u>	<u>Number of Doses-Vaccine Type</u>
under 2 months old	no vaccinations required
by 3 months of age	1 dose of polio vaccine 1 dose of DTP vaccine 1 dose of Hib vaccine
by 5 months of age	2 doses of polio vaccine 2 doses of DTP vaccine 2 doses of Hib vaccine
by 7 months of age	2 doses of polio vaccine 3 doses of DTP vaccine *2 or 3 doses of Hib vaccine
by 16 months of age	2 doses of polio vaccine 3 doses of DTP vaccine 1 dose of MMR vaccine administered no earlier than 12 months of age *1 dose of Hib vaccine given after 12 or 15 months of age
by 19 months of age	1 dose of varicella vaccine 3 doses of polio vaccine 4 doses of DTP vaccine 1 dose of MMR vaccine administered no earlier than 12 months of age *1 dose of Hib vaccine given after 12 or 15 months of age
(*) varies depending on vaccine type used.	

- (2) If the child is at least 12 months old but not less than 60 months of age and has not received any Hib vaccine, the child must receive a dose prior to entry.
- (3) DT vaccine administered to a child less than 7 years of age is acceptable for purposes of this rule only if accompanied by a medical exemption meeting the requirements of ARM 16.28.707 that exempts the child from pertussis vaccination.

- (4) Before a child between the ages of five and 12 may attend a day care facility providing care to school aged children, that facility must be provided with documentation required by (5) that the child has been immunized as required for the child's age group against measles, rubella, mumps, poliomyelitis, diphtheria, pertussis (whooping cough), tetanus, and Haemophiles influenza type B, unless the child qualifies for conditional attendance in accordance with (9).

Vaccine

Dosages Required by Age

Polio	Each child must receive at least three doses of polio vaccine, one of which is administered after age four.
DTP or DTaP	<p>Each child must receive at least four doses of DTP or DTaP (diphtheria, tetanus and pertussis) vaccines by age four and one dose of DTaP after age four but before age seven, unless a licensed health care provider has issued a medical exemption for the pertussis portion of the DTP or DTaP vaccine. If a medical exemption has been issued for pertussis, the child must receive at least four doses of DT, DTP, and DTaP vaccines before age four and one dose of the DT vaccine after age four but before age seven.</p> <p>Because neither DTP nor DTaP vaccines are recommended or required for a child older than age seven, a child in the day care age seven or older who has not received the four doses for DTaP or DTP vaccinations described above must receive a Td vaccine (tetanus and diphtheria vaccine intended for persons seven years of age or older) as soon as possible and must then receive sufficient additional Td doses to reach a minimum of three doses of any combination of DTP, DTaP, DT, or Td.</p>
Td	Each child in the day care must receive a Td tetanus diphtheria vaccine intended for children younger than seven years of age booster shot unless the child has had a DTP, DTaP, DT, or Td shot within the previous five years or the child received a Td shot at seven years of age or older.

- (5) Documentation of immunization status for purposes of this rule consists of a completed Montana certificate of immunization form (HPS-101), including the date of birth, the name of each vaccine provided, and the month, day, and year of each vaccination.
- (6) In order to continue to attend a day care facility, a child must continue to be immunized on the schedule described in (1) and must be immediately excluded from attendance in the day care facility if the child is not vaccinated on that schedule with all of the required vaccines, or does not have on file at the day care facility a record of medical exemption or a conditional enrollment form which indicates that no vaccine dose is past due.
- (7) Hib vaccine is not required or recommended for children 5 years of age and older.
- (8) Doses of MMR vaccine, to be acceptable under this rule, must be given no earlier than 12 months of age and a child who received a dose prior to 12 months of age must be revaccinated before attending a day care facility.
- (9) A child may initially conditionally attend a day care facility if :
- (a) The child has received at least 1 dose of each of the vaccines required for the child's age;
 - (b) A form prescribed by the department documenting the child's conditional immunization status is on file at the day care facility and is attached to the department's Montana certificate of immunization (HPS-101); and
 - (c) The child is not past due for the next required dose (as noted on the conditional enrollment form) of the vaccine in question.

- (10) If a child in attendance at the day care facility, a resident of the day care facility, or a staff member or volunteer contracts any of the diseases for which this rule requires immunization, all individuals infected and all persons attending the day care facility who are not completely immunized against the disease in question or who are exempted from immunization must be excluded from the day care facility until the local health authority indicates to the day care facility that the outbreak is over.
- (11) The day care facility must maintain a written record of immunization status of each enrolled child and each child of a staff member who resides at the day care facility. The facility must make those records available during normal working hours to representatives of the department or the local health authority.
- (12) A child seeking to attend a day care facility is not required to have any immunizations, which are medically contraindicated. A written and signed statement from a physician that an immunization is medically contraindicated will exempt a person from the applicable immunization requirements of this rule.
- (13) A child under 5 years of age seeking to attend a day care facility is not required to be immunized against Haemophilus influenza type B if the parent or guardian of the child objects thereto in a signed, written statement indicating that the proposed immunization interferes with the free exercise of the religious beliefs of the person signing the statement.
- (14) The department adopts and incorporates by reference ARM 16.28.707 which sets the requirements for a medical exemption from vaccination. A copy of ARM16.28.707 may be obtained from the Department of Public Health and Human Services, Public Health and Safety Division, P.O. Box 202951, Helena, MT 59620-2951.

37.95.141 CHILDREN'S RECORDS

- (1) The facility shall keep a daily attendance record of the children for whom care is provided.
- (2) The facility shall have a master list of the name, address, and phone number of all children in their care and their parents.
- (3) If medications are administered at the facility, the facility shall maintain a medication administration log.
- (4) All records of the facility shall be made available to the department upon request.
- (5) Prior to a child being enrolled or entered into a day care facility, the following information must be on file:
 - (a) written information on each child explaining any special needs of the child, including allergies;
 - (b) a release or authorization of persons allowed to pick up the child;
 - (c) necessary medical forms, including all medication authorization and administration logs, signed and updated immunization records and the names of emergency contact persons; and
 - (d) an emergency consent form. This form must accompany staff when children are away from the day care site for activities; and
 - (e) a record of each fire drill conducted pursuant to ARM 37.95.706, including who conducted the drill, when the drill took place, how many adults and children were present, the time of day the drill occurred and how long it took to evacuate.
- (6) The information supplied in (5)(a) through (d) must be maintained on forms provided by the department and must be signed by the parent or guardian.

37.95.145 LICENSE OR REGISTRATION RENEWAL PROCEDURES

- (1) A licensed or registered day care provider will be sent notification at least 90 days prior to the expiration of the current license/registration certificate.
 - (a) The notice shall advise the provider that the current license/registration is expiring and shall inform the provider how to access the information needed to renew the certificate.
 - (b) The notice will also provide information on where and when to submit renewal information and will explain the consequences for late or incomplete submission of renewal materials.
 - (c) The provider and all staff must complete required training hours, including training in first aid and CPR, and the provider must submit proof that the training was completed prior to the date the day care certificate expires.
 - (d) If a complete renewal application is received on or before the current certification expiration date, a "regular renewal certificate" will be issued and no break in the certificate date span will occur.

- (e) If a renewal application is received before the current certificate expiration date but is incomplete, the department will identify to the provider, in writing, what items are missing. If those missing items are received before the certificate expiration date, there shall be no break in the certificate date span.
- (2) If a provider is unable to fulfill all aspects of the renewal process due to circumstances beyond the provider's control such as a personal crisis involving the death of an immediate family member, a major medical emergency, or other good cause shown, the department may grant the provider a three month "provisional" registration. All licensing requirements for renewal must be completed by the end of the provisional period or the license will lapse. If all required materials are submitted within the three month period, the license will be reactivated as a regular renewal certificate.
- (3) A "delayed registration" will be granted if a provider submits a renewal application which is received by the department prior to the expiration date of the current certificate, but the application is incomplete due to one or both of the following factors:
 - (a) Events such as required provider or staff training or CPR classes are scheduled close to the expiration date of the license certificate and the department does not receive the required training until after the certificate expiration date; or
 - (b) A required event that is scheduled to occur before expiration of the license is cancelled at no fault of the provider and the event must be rescheduled after the expiration of the license certification.
- (4) When a complete renewal packet is received after the expiration date, a regular registration will be issued effective the date the packet was submitted to the department, unless the department has another basis for taking negative licensing action and the license is or has been summarily suspended by the department pursuant to 2-4-631(3), MCA. The license will be deemed to have lapsed on the date of expiration.
 - (a) When a renewal packet is received after the expiration date and is incomplete, the department will notify the provider of what items must still be submitted to the department and break in the certificate date span will occur until those missing items are submitted. The issuance date of the certificate will be the date the last requested item is received by the department.
 - (b) When a certificate has lapsed for 60 or more days, it will be deemed to have automatically terminated.
- (5) Any provider whose license or registration is deemed terminated based upon failure to complete the renewal process within the timeliness provided in this rule may be relicensed by filing a new license or registration application and meeting all initial licensure requirements.

37.95.146 LICENSE OR REGISTRATION NOT TRANSFERABLE

- (1) The registration certificate or license is not transferable to another operator or site.
- (2) A license or registration is valid only for the person and premises for which it was issued. A license or registration may not be sold, assigned, or transferred.
- (3) Upon discontinuance of the operation or upon transfer of ownership of the facility, the license or registration certificate must be physically returned to the department within ten working days.

37.95.149 LICENSE FOR EACH PREMISES

- (1) Separate registration certificates and licenses shall be required for programs maintained on separate premises, even when operated by the same provider.

37.95.150 DAY CARE FACILITIES: LICENSE OR REGISTRATION CERTIFICATE TO BE POSTED

- (1) Each day care facility must post its license in plain view where it is readily viewable by parents dropping off or picking up children.

37.95.153 NOTICE OF CHANGES

- (1) The department must be notified of any changes, including changes in staff, changes in the category of children in day care, or changes to the day care property, that would affect the terms of the registration or licensure.

37.95.154 COOPERATION WITH THE DEPARTMENT AND DEPARTMENT ACCESS

- (1) An authorized representative of the department may inspect a facility and associated property without prior notice to the owner or staff of the facility whenever the department considers it necessary and any time children are in care.

37.95.155 FACILITY RECORDS

- (1) The provider shall maintain all policies, records, and reports that are required by the department. These policies must be reviewed and updated annually by the facility.
- (2) The department must be given access to all records and an opportunity to copy the records whenever children are in care.

37.95.156 CONFIDENTIALITY REQUIREMENTS

- (1) The provider and all staff and volunteers shall maintain personal information about the child and the child's family as confidential.

37.95.160 STAFF RECORDS

- (1) The provider shall maintain records regarding each care-giver which include:
 - (a) a record of training and verifiable experience;
 - (b) results of a criminal and protective services background check;
 - (c) personal statement of health and verification of CPR and first aid; and
 - (d) immunization records that establish compliance with ARM 37.95.140
- (2) The facility shall maintain a current list of staff that specifies each staff person's legal name, position, age, residential and mailing addresses, and phone numbers.

37.95.161 CRIMINAL BACKGROUND CHECKS

- (1) A satisfactory criminal background, motor vehicle, and child and adult protective services check is required for each day care provider, on all staff, including caregiver, administrative staff, aides, volunteers, kitchen and custodial staff, and all persons over the age of 18 residing in the day care facility or who stays in the day care facility regularly or frequently.
- (2) If the provider, staff member, volunteer, or resident has always lived in Montana, a Montana based criminal background check will be conducted based upon a name based criminal records check.
- (3) If the provider, staff member, volunteer, resident of the facility, or any person who regularly or frequently stays in the facility, has lived outside of Montana for any portion of the previous 5 years, that person must submit a completed fingerprint card so that a fingerprint based criminal records check can be requested.
- (4) If an applicant has lived in states other than Montana, a check will be made of the violent offender and criminal history registries if this information is available for states in which the applicant has lived.
- (5) If after 45 days, the department has been unable to obtain results of a criminal records check for an applicant who has lived in Montana for at least five years, the applicant must sign an affidavit attesting to his lack of criminal history or to the details of existing criminal history. The affidavit will be accepted in lieu of receipt of results from a criminal history check.
- (6) An applicant who has not lived in Montana for at least five years cannot be licensed without receipt of results of a criminal records check from every state in which the applicant has lived since the age of 18.
- (7) An annual name based criminal records check for all providers, all staff, including caregivers, administrative staff, aides, volunteers, kitchen and custodial staff, and persons residing in the day care facility, is required for relicensure.
- (8) Persons formerly licensed as day care providers will be treated as new applicants if the former provider has not been licensed for a period of more than one year or if the provider has lived out-of-state for any period of time since being licensed in Montana.
- (9) A name based check for criminal records will be used for applicants who have lived in Montana since the expiration of their previous license or registration if it has been less than one year since the expiration of the license.

37.95.162 REQUIRED ANNUAL TRAINING

- (1) The provider and all care-givers at any day care facility must each verify that they have successfully completed a minimum of at least eight hours of approved education/training annually, unless otherwise specified in these rules, within the 12 months prior to license/registration expiration or the license/registration anniversary date.
- (2) Training may be obtained from the department or other department approved professional child care education and development programs offered:
 - (a) by national, state, or local child care organizations;
 - (b) by institutions of higher education that are regionally accredited; or
 - (c) through the successful completion of college level course work in early childhood areas or child development.
- (3) Approved education and training must relate to the Montana Early Care and Education Knowledge Base and must fall within the following categories:
 - (a) Personal attributes/characteristics;
 - (b) Health, safety, and nutrition which may include training on prevention of sudden infant death syndrome (SIDS) and medication administration;
 - (c) Child growth and development;
 - (d) Environmental design;
 - (e) Child guidance;
 - (f) Family and community partnerships;
 - (g) Program management;
 - (h) Curriculum;
 - (i) Observation and assessment;
 - (j) Professionalism; or
 - (k) Cultural and developmental diversity.
- (4) With the exception of volunteers, any person who provides care to children in a day care facility for at least 160 hours a year is required to successfully complete eight hours of approved education or training annually.

37.95.165 NOTICE OF CURRENT ADDRESS

- (1) The provider shall provide the department with any change in the provider's mailing address within 10 days of the change.

37.95.166 STAFF APPROVAL

- (1) The department shall not grant approval to any day care facility for any director, care giver, volunteer, or support staff person who has been convicted of a crime identified in 37.95.176(1).

37.95.168 REQUIRING EXAMINATIONS

- (1) The department may require an applicant, a provider, a staff person, a volunteer, or any person living in the day care facility or staying in the day care facility on a regular or frequent basis, to undergo a physical, psychological, psychiatric, or chemical dependency evaluation if the department determines such an evaluation is relevant to the department's reasonable belief that the person has engaged in behaviors that may place children or other adults at risk of harm.

37.95.171 MANDATED REPORTING OF SUSPECTED CHILD ABUSE AND NEGLECT

- (1) The director, assistant director or any staff member of the day care facility who has reason to suspect that any child is or has been abused or neglected is required to personally report the matter promptly to the department child abuse hotline at 1 (866) 820-5437. The day care provider or staff member shall make the report within 24 hours of receiving information concerning suspected child abuse or neglect.

37.95.172 SUPERVISION AT ALL TIMES

- (1) Caregivers must supervise children at all times.
- (2) The provider and all caregivers shall be responsible for direct care, protection, supervision, and guidance of children through active involvement or direct observation.

37.95.173 PROTECTION OF CHILDREN FROM A PERSON CHARGED WITH A CRIME INVOLVING CHILDREN, VIOLENCE, OR DRUGS

- (1) A caregiver, volunteer, support staff person, other adult residing in the day care facility, or other person who regularly or frequently stays in the facility, who is charged with a crime involving children, physical or sexual violence against any person, or any felony drug related offense, or awaiting trial may not provide care or be present in the facility pending the outcome of the trial.

37.95.174 NO THREAT FROM PERSONS IN CONTACT WITH CHILDREN

- (1) No staff member, aide, volunteer, or other person having direct contact with the children in the facility shall pose any potential threat to the health, safety, and well being of the children in care.

37.95.175 REAPPLICATION AFTER SUSPENSION OR REVOCATION

- (1) An applicant who has had a previous day care application denied or who has had a day care license or registration certificate revoked or suspended may not reapply for licensure or registration within one year of the denial revocation.
- (2) If the suspension or revocation is contested and upheld after a fair hearing, the reapplication may not be made until one year after the date of the decision of the hearing officer.

37.95.176 NEGATIVE LICENSING ACTION

- (1) After written notice to the applicant, licensee, or registrant, the department shall deny, suspend, restrict, revoke, or reduce to a provisional or probationary status a registration certificate or license upon finding that:
 - (a) the applicant, licensee, or registrant, or a member of the applicant's, licensee's, or registrant's household or any person staying in the facility on a regular or frequent basis has a conviction for a serious crime, such as but not limited to homicide, sexual intercourse without consent, sexual assault, aggravated assault, assault on a minor, assault on an officer, assault with a weapon, kidnapping, aggravated kidnapping, prostitution, robbery, or burglary;
 - (b) the applicant, licensee, registrant, or member of the applicant's, licensee's, or registrant's household or any person staying in the facility on a regular or frequent basis has a conviction for a crime pertaining to children or families, including but not limited to child abuse or neglect, incest, child sexual abuse, ritual abuse of a minor, felony partner or family member assault, child pornography, child prostitution, internet crimes involving children, felony endangering the welfare of a child, felony unlawful transactions with children, or aggravated interference with parent-child contact;
 - (c) the applicant, licensee, registrant, or a member of the applicant's, licensee's, or registrant's household has within the previous five years had a felony conviction for a drug related offense, including but not limited to use, distribution, or possession of controlled substances, criminal possession of precursors to dangerous drugs, criminal manufacture of dangerous drugs, criminal possession of imitation dangerous drugs with the purpose to distribute, criminal possession, manufacture or delivery of drug paraphernalia, or driving under the influence of alcohol or other drugs;

- (d) the applicant, licensee, registrant, or member of the applicant's, licensee's, or registrant's household or any person staying in the facility on a regular or frequent basis has been convicted of abuse, sexual abuse, neglect, or exploitation of an elderly person or a person with a developmental disability.
- (2) The department after written notice to the applicant, licensee, or registrant may deny, suspend, or revoke a registration certificate license or registration certification or may restrict or reduce to a provisional, or probationary status a registration certificate license or registration certification upon finding that:
 - (a) the applicant, licensee, or registrant, or member of the applicant's, licensee's, or registrant's household or any person staying in the facility on a regular or frequent basis has a conviction for misdemeanor partner/family member assault, misdemeanor endangering the welfare of a child, misdemeanor unlawful transaction with children, or a crime involving an abuse of the public trust;
 - (b) the day care is not in compliance with fire safety standards imposed by these rules, or by the state fire marshal or other authority having jurisdiction;
 - (c) the day care has not met or is no longer meeting the requirements for licensure or registration set forth in these rules;
 - (d) the provider has made any material misrepresentations to the department, either negligent or intentional, including an omission of information the provider is obligated to disclose to the department, regarding any aspect of the day care or its operations;
 - (e) the provider, any staff member, volunteer, or any person residing in the day care or anyone staying in the facility on a frequent or regular basis has been named as the perpetrator in a substantiated report of abuse or neglect;
 - (f) upon referral of suspected child abuse or neglect regarding an operating day care facility, the initial investigation by the department, or by a law enforcement agency determines that there is a probable cause to believe that a child in the facility may be in danger of harm;
 - (g) the provider or any staff member has failed to report an incident of suspected abuse or neglect of any child to the department as required by 41-3-201, MCA, within 24 hours of receiving information pertaining to the incident;
 - (h) the results of a psychological or medical examination provided reasonable grounds for the department to believe that the provider, any staff member, or volunteer in the day care is not an appropriate caretaker for a child;
 - (i) the provider, any staff member, or any volunteer may pose any risk or threat to the safety or welfare of a child in the day care;
 - (j) the day care has failed to protect the health, welfare, or safety of a child, or day care presents a reasonably foreseeable serious hazard to the health, safety, or welfare of a child;
 - (k) a director, caregiver, volunteer, or adult residing in the facility or staying in the facility on a regular or frequent basis has violated a licensing regulation which resulted in harm to a child as defined in 41-3-102, MCA or knowingly allowed harm to occur to a child as defined in 41-3-102, MCA, whether or not that person was prosecuted or convicted of child abuse or neglect; or
 - (l) a day care license or registration may be suspended, restricted, or revoked at the discretion of the department if the licensee's child is removed from the licensee by the department.
- (3) Suspension or revocation may be immediate upon a determination by the department that public health, safety, or welfare imperatively requires emergency action. Such a determination may be based on findings including, but not limited to the following situations:
 - (a) upon referral of suspected child abuse or neglect regarding an operating day care facility, the initial investigation reveals that there are reasonable grounds to believe that a child in the facility may be in danger of harm;
 - (b) the department requests and is denied access to the licensed or registered facility;
 - (c) the provider has made any material misrepresentation to the department, either negligently or intentionally, regarding any information requested on the application form or necessary for registration or licensing purposes;
 - (d) the provider, a member of the provider's household, or staff has been named as the perpetrator in a substantiated report of child abuse or neglect as defined in ARM 37.95.1016; or

- (e) through a child care licensing investigation, it is determined that the provider, provider's staff, or member of the provider's household has violated a licensing regulation that has resulted in harm to a child which falls within the definitions of child abuse and neglect set out in 41-3-102, MCA, whether or not a criminal prosecution is initiated.
- (4) If a licensee is placed on a probationary or other provisional status, the department shall notify all parents and guardians of all children attending the facility of the status of the license, the basis for the reduced status and the time period for which the license is reduced. The department may do so by personal notice, by written notice, or by posting notice on the day care license, which is required to be posted in plain view at the facility.
- (5) If a license or registration certificate has been denied to an applicant, or negative licensing action is proposed against a license or registration certificate based upon a conviction identified in (1)(a) through (d) or (2)(a), and the applicant, licensee, or registrant requests a fair hearing and establishes by clear and convincing evidence that the convicted person has been sufficiently rehabilitated to warrant the public trust, the department may issue the license or registration certificate or may withdraw the proposed negative licensing action.

37.95.181 DAY CARE FACILITIES: MEDICATION ADMINISTRATION

- (1) No day care employee, owner, or operator may administer any medication to a child without the written authorization of the parents including the child's name, date or dates for which the authorization is applicable, dosage instructions, and the signature of the child's parent or guardian.
- (2) If an emergency arises and the parents or guardian of the child is unavailable, an employee, owner, or operator may administer medicine to a child if:
 - (a) a medical practitioner provides a written authorization containing the child's name, date or dates for which the authorization is applicable, dosage instructions, and the medical provider's signature; or
 - (b) a medical practitioner, emergency service provider, or 911 responder verbally directs the employee, owner, or operator of the day care facility to immediately administer a medicine to the child, in which case the child must then be transported to a health care facility or a medical practitioner for follow up care within a reasonable time by the child's parent or guardian or by an employee, owner, or operator of a day care facility.
- (3) An employee, owner, or operator of a day care facility may not give medication to a child in a manner that is inconsistent with the container instructions on dosage or frequency unless directed to do so by a medical provider as provided in 52-2-736, MCA.
- (4) If the provider/facility elects to administer medication to children, the provider/facility must maintain the following documentation on site:
 - (a) A medication record which includes:
 - (i) the written authorization of the parents for the caregiver to administer medication;
 - (ii) the prescription by a health care provider if required; and
 - (iii) a medication administration log.
 - (b) a written medication administration policy which includes at a minimum:
 - (i) types of medication which may be administered; and
 - (ii) medication administration which may be administered; and including the route of medication administration, the amount of medication given, and the times when medication is to be administered; and
 - (c) A health care and medication plan for children who may have special health care needs or those requiring medication for chronic health conditions which has been approved by a health care provider licensed in Montana.

37.95.182 DAY CARE FACILITIES: STORAGE AND ADMINISTRATION OF MEDICATION

- (1)** Any prescription medication brought into the facility by the parent, legal guardian, or responsible relative of a child shall be dated and shall be kept in the original container labeled by a pharmacist with the following information:
 - (a)** child's first and last name;
 - (b)** the date the prescription was filled;
 - (c)** the name of the health care provider who wrote the prescription; and
 - (d)** the medication's expiration date, and specific legible instructions for administration, storage, and disposal (i.e., the manufacturer's instruction or prescription label).
- (2)** Any nonprescription medication brought into the facility for use by a specific child shall be labeled with the following information:
 - (a)** the date;
 - (b)** child's first and last name;
 - (c)** specific legible instructions for administration and storage (i.e., the manufacturer's instructions); and
 - (d)** the name of the health care provider, parent, or guardian who made the recommendation.
- (3)** All medications, refrigerated or unrefrigerated, shall:
 - (a)** have child-protective caps;
 - (b)** be kept in an orderly fashion;
 - (c)** be stored away from food at the proper temperatures; and
 - (d)** kept in a location inaccessible to children or kept in a locked box.
- (4)** Medication shall not be used beyond the date of expiration.

37.95.183 FIRST AID REQUIREMENTS

- (1)** Each provider shall adopt and follow written policies for first aid consistent with recommendations from the American Red Cross. These policies must include but are not limited to:
 - (a)** procedures for handling medical emergencies, including calling the Emergency Montana Poison Control Center at 1 (800) 222-1222 when a child is suspected of having ingested any poisonous or toxic substance; and
 - (b)** directions for calling parents or someone else designated as responsible for the child when a child is sick or injured.
- (2)** A first aid kit must be kept on site at all times and must at a minimum contain:
 - (a)** Unexpired syrup of ipecac (one ounce bottle) which may be administered only upon directive from the Emergency Montana Poison Control Center or upon directive of the local emergency service program (i.e., 911 operator, local hospital, or physician);
 - (b)** Sterile, absorbent bandages;
 - (c)** A cold pack;
 - (d)** Tape and a variety of band-aids;
 - (e)** Tweezers and scissors;
 - (f)** The toll free number for the Emergency Montana Poison Control Center, 1(800) 222-1222;
 - (g)** Disposable single use gloves.
 - (h)** The director, owner, manager, or person in charge of the day care facility shall take precautions to minimize the risk of any child suffering sunburn and to minimize the risk of any child contracting west Nile virus; and
- (3)** Each day care provider is responsible for notifying the department of any environmental danger or other hazard on the facility property that the provider is aware of that could affect the health, welfare, or safety of children in care.

- (4) A portable first aid kit containing at least the items listed in (2) above must accompany staff and children on trips away from the facility.
- (5) The provider shall submit a report to the appropriate local office of the department within 24 hours after the occurrence of an accident causing injury to a child which resulted in the child being hospitalized, requiring ambulance transport or intervention, or physician treatment, or any fire in the facility when the services of the fire department were required. A copy of the report shall be provided to the parents of the children involved, and a copy retained on file at the day care facility.
- (6) A notation of all injuries must be made on the child's medical record including the date, time of day, nature of the injury, treatment, and whether the parent was notified.

37.95.184 HEALTH HABITS

- (1) Good health habits, such as washing hands, must be taught during everyday activities. The care-givers must ensure that each child washes his hands:
 - (a) Before eating;
 - (b) Before participating in food preparation activities; and
 - (c) After using the toilet.
- (2) Every employee, volunteer, or resident at a day care facility must:
 - (a) be excluded from day care facility if the person has a communicable disease, a sore throat or cold that is accompanied by a fever of 101°F or greater, or if the person exhibits any of the symptoms outlined in ARM 37.95.139(4) for which a child would be excluded;
 - (b) Wash their hands and exposed portions of their arms with a cleaning compound in a sink by vigorously rubbing together the surfaces of their lathered hands and arms for at least 20 seconds and thoroughly rinsing with clear water, paying particular attention to the areas underneath the fingernails and between the fingers, at the following times:
 - (i) After touching bare human body parts other than clean hands and clean exposed portions of arms;
 - (ii) After using the toilet;
 - (iii) After every diapering;
 - (iv) After coughing, sneezing, or using a handkerchief or disposable tissue;
 - (v) Immediately before engaging in food preparation and before feeding any child;
 - (vi) During food preparation as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks; and
 - (vii) After engaging in other activities that contaminate the hands; and
 - (c) Provide documentation of complete measles, mumps, and rubella immunizations and a tetanus and diphtheria booster within the 10 years prior to commencing work, volunteering, or residing at the day care facility.

SPECIFIC REQUIREMENTS

37.95.602 PROGRAM REQUIREMENTS

- (1) The program conducted in a day care center shall be written and shall provide experiences which are responsive to the individual child's pattern of chronological, physical, emotional, social and intellectual growth and well being. Both active and passive learning experiences shall be provided under direct adult supervision.
- (2) The requirement in (1) shall be deemed to have been satisfied if the licensing representative has been able to observe the daily program in operation, reviews the written daily program and confirms the program is based upon the criteria below:
 - (a) The center maintains an on-going process of parent-staff cooperation in development and modification of program goals;
 - (b) The center provides a diversity of experiences during the day for each child with opportunity for quiet and active experiences, group and individual activities, the exercise of choice and experience with different types of equipment and materials;
 - (c) The center provides developmentally appropriate opportunities during the day when the child can take responsibility, such as getting ready for snacks or meals, getting out or putting away materials, taking care of the child's own clothing, and assisting in planning activities;
 - (d) The center provides experiences for children to learn about the world in which they live including opportunities for field trips to places of interest in the community and/or presentations by family and other community people to further expand the exposure and experiences of the children. Care-givers are required to secure a release from parents before children are taken on field trips;
 - (e) The center provides learning experiences for the children regarding the value of food in relation to growth and development; and
 - (f) The center provides opportunities for children to develop language skills and to improve readiness for reading and writing by regularly exposing the children to books, drama, poetry, music and other forms of expression.

37.95.606 DISCIPLINE

- (1) Caregivers shall use appropriate forms of discipline. Physical punishment, including spanking or other forms of corporal punishment, is strictly prohibited in day care facilities. Discipline shall include positive guidance, redirection and the setting of clear limits that foster the child's ability to become self-disciplined.
- (2) Any punishment or discipline which is humiliating, shaming, frightening, or otherwise damaging is strictly prohibited.
- (3) Parental or guardian permission does not allow for the use of any punishments listed in (1) or (2) above.
- (4) The provider is responsible for ensuring that each caregiver participates in an in-service training session regarding discipline and guidance techniques appropriate for children.

37.95.610 DAY CARE CENTERS, SPACE

- (1) A day care center must have sufficient indoor and outdoor space for the number and ages of children in care.
- (2) Calculation of the required minimum 35 square feet of space per child must exclude food preparation areas of the kitchen, bathrooms, toilets, offices, staff rooms, corridors, hallways, closets, lockers, laundry areas, furnace rooms, cabinets, shelving, and other storage spaces.
- (3) In facilities licensed after June 2, 2006, this requirement shall be deemed to have been satisfied if each designated area for children's activities contains a minimum of 35 square feet of usable floor space per child that will be in the room at any one time, as calculated in (2).
- (4) When play and sleep areas for children are in the same room, a minimum of 35 square feet of usable space per child shall be provided except for:
 - (a) Periods when children are using their rest equipment, or
 - (b) When large group activities, such as educational assemblies occur.

- (5) During sleep periods, the space shall be sufficient to provide spacing between children using sleep equipment.
- (6) The equipment and furniture arrangement must permit unobstructed floor area sufficient to allow vigorous play appropriate for each group of children in care as well as arrangements of any sleeping equipment used which permit easy access to every child and unobstructed exits.
- (7) Outdoor play areas at the facility must be surrounded by a fence that is at least four feet high and in good repair without any holes or spaces greater than four inches in diameter. Outdoor areas must be designed so that all parts are always visible to allow for direct supervision by child care staff.
- (8) The center may obtain an exception from the department from the requirements of this rule for the following reasons:
 - (a) Limited outdoor space is offset by a greater amount of indoor space, such as a gym, permitting an equivalent activity program;
 - (b) Limited indoor space is offset by sheltered outdoor space where climate permits reliance on outdoor space for activities normally conducted indoors; or
 - (c) Limited outdoor or unfenced space is offset by the availability or use of an adjacent school playground, nearby parks, or other safe outdoor play area.

37.95.611 SUPPORT SERVICES SPACE

- (1) A day care center must have sufficient space and appropriate furniture and equipment to provide for support functions and to provide for the reasonable comfort and convenience of staff and parents.
- (2) This requirement shall be deemed to have been satisfied if the center has appropriate storage and work areas adjacent to the area of use, to accommodate the following functions if these are conducted on the premises:
 - (a) Administrative office functions, record storage, meeting arrangements for staff or for parent conference offering privacy of conversation;
 - (b) Food preparation and serving;
 - (c) Custodial services;
 - (d) Laundry;
 - (e) Rest area for staff relief periods; and
 - (f) Storage of program materials and manipulative toys to be used and rotated at different times during the year.

37.95.613 DAY CARE CENTERS, MATERIALS AND EQUIPMENT

- (1) The amount and variety of materials and equipment available, and their arrangement and use, must be appropriate to the developmental needs of the children in care. This requirement shall be deemed to have been satisfied if the licensing representative has been able to observe the program in operation and approves the selection, arrangement and use of materials and equipment, based on the following criteria:
 - (a) Centers shall maintain a housekeeping area, table activities (manipulative toys) area, block building area, library or other quiet area, and a creative arts area. Arrangement of these areas shall be such that quiet and active zones are separated and not conflicting;
 - (b) The quantity and quality of materials and equipment shall be sufficient to permit multiple use of the same item by several children so excessive competition and long waits are avoided;
 - (c) Materials and equipment shall be of sufficient quantity and quality to provide for a variety of experiences and appeal to the individual interests of the children in care;
 - (d) Furniture shall be durable, safe, clean, and be child size or appropriately adapted for children's use;
 - (e) Storage shelves shall be provided to children at their level.
- (2) Play equipment and materials must include items from each of the following six categories:
 - (a) Dramatic role playing;
 - (b) Cognitive development;
 - (c) Visual development;
 - (d) Auditory development;
 - (e) Tactile development; and
 - (f) Large-muscle development.

- (3) High chairs, when used, must have a wide base and a safety strap.
- (4) Each child, shall have clean, sanitized and age-appropriate rest equipment. Seasonably appropriate covering, such as sheets or blankets, for a crib, cot, bed or mat must be provided. Crib mattresses and other rest equipment shall be waterproof and regularly sanitized.
- (5) Each facility must have a working telephone.
- (6) Telephone numbers of the parents, the hospital, police department, fire department, ambulance, and the Emergency Montana Poison Control Center (1 (800) 222-1222) must be posted by each telephone.

37.95.619 DAY CARE CENTERS: NIGHT CARE

- (1) A day care center offering night care must develop plans for program, staff, equipment and space which will provide appropriately for the personal safety and emotional and physical care of children away from their families at night.
- (2) This requirement shall be deemed to have been met if:
 - (a) Special attention is given by the caregiver and the parents to provide for a transition into this type of care appropriate to the child's emotional needs;
 - (b) A selection of toys for quiet activities which can be used with minimal adult supervision is provided for children prior to bedtime;
 - (c) Bathing facilities, comfortable beds or cots, and complete bedding, are provided;
 - (d) Staff are available to assist children during eating and pre-bedtime hours and during the morning period when dressing;
 - (e) During sleeping hours, staff are awake, in the immediate vicinity, and on the same floor level of sleeping children in order to provide for the needs of children and respond to any emergency; and
 - (f) At appropriate times a nutritious dinner and/or breakfast is served to children and a bedtime snack is offered.

37.95.622 DAY CARE CENTERS: STAFFING QUALIFICATIONS

- (1) All providers, staff members, and volunteers at a day care center must be:
 - (a) able to demonstrate they are physically, emotionally, and mentally capable of performing the essential functions of the position with or without reasonable accommodations;
 - (b) free of communicable disease;
 - (c) immunized in compliance with ARM 37.95.140; and
 - (d) able to demonstrate they are of good moral character.
- (2) Each day care center will have a director. The director shall have a bachelor's degree in a related field plus one year experience in child day care or child development associate certification (CDA) or three years experience in a licensed or registered day care facility. If the director also acts as a caregiver, or conducts in-service training, the director must meet the qualifications of a primary caregiver.
- (3) A center director must obtain 15 hours of approved education/training on an annual basis.
- (4) A primary caregiver must
 - (a) Be at least 18 years of age;
 - (b) Have sufficient language skills to communicate with children and adults;
 - (c) Have at least one day of one the job orientation; and
 - (d) Receive a minimum of at least eight hours of documented continuing education annually as provided in 37.95.162; and
 - (e) Have the following training and experience:
 - (i) Two years experience in an early childhood program such as a day care center, a family or group day care home, headstart, early headstart, or another recognized preschool program; or
 - (ii) Child development associate credential; or
 - (iii) A bachelor of arts or an associate degree in education or a related field;
 - (f) Hold a current course completion card in infant, child and adult CPR and infant choking response; and
 - (g) Be currently certified in standard first aid.

- (5) Course completion as indicate in 3 (f) means direct instruction, which includes the practical and demonstrated applications of CPR methods as taught by instructors from accredited entities.
- (6) An aide must be directly supervised by a primary care-giver and shall be at least 16 years of age and must:
 - (a) Have sufficient language skills to communicate with children and adults;
 - (b) Have at least one day of one the job orientation; and
 - (c) Receive a minimum of at least eight hours of verified education or training annually as provided in ARM 37.95.162.

37.95.623 DAY CARE CENTERS: CHILD-TO-STAFF RATIOS

- (1) The child to staff ratio for day care center is:
 - (a) 4:1 for infants zero months through 23 months;
 - (b) 8:1 for children two years through three years;
 - (c) 10:1 for children four years through five years; and
 - (d) 14:1 for six years and over
- (2) Only the day care center director, primary care-givers, and aides may be counted as staff when determining the staff ratio.

37.95.640 DAY CARE CENTERS: LICENSING SERVICES PROVIDED

- (1) The department will provide the following:
 - (a) Assistance to the applicant to meet licensing requirements;
 - (b) Referral services concerning child problems;
 - (c) Consultation to the day care center in providing enrichment experiences for the children, proper environment and nutrition; and
 - (d) Technical assistance to day care centers for staff training.
- (2) The department or its authorized representative shall make periodic unannounced visits to all licensed day care centers to ensure continued compliance with licensing requirements.

INFANT DAY CARE REGULATIONS

37.95.128 PHYSICAL EXAMINATION

- (1) A day care facility must have on file a health record form, provided by the department, concerning any special health risks that would affect other children. This must be obtained and kept on file by the provider prior to residence or enrollment of the infant in the day care facility. The health record form must be signed by:
 - (a) A physician licensed to practice medicine in Montana pursuant to Title 37, chapter 3, MCA; or
 - (b) A physician assistant-certified licensed to practice in Montana and practicing under a utilization plan approved by the board of medical examiners; or
 - (c) A person licensed in Montana as a professional nurse and recognized by the board of nursing as a nurse practitioner or clinical nurse specialist; or
 - (d) A naturopathic physician licensed under Title 37, chapter26, MCA.

37.95.1001 DIAPERING AND TOILET TRAINING

- (1) A sufficient supply of clean, dry diapers shall be available and diapers shall be changed as frequently as needed. Disposable diapers, a commercial diaper service, or reusable diapers supplied by the child's family may be used. If non-disposable diapers are used, the facility may launder the diapers using a germicidal process approved by the state or local health department. In the absence of such a process, the facility may not launder non-disposable diapers of enrolled children.

- (2) Soiled reusable diapers shall be placed into separate cleanable covered containers provided with waterproof liners prior to transport to laundry, parent, or acceptable disposal. These containers shall be emptied, cleaned and disinfected daily. Soiled disposable diapers shall be disposed of immediately into an outside trash disposal or put in a securely tied plastic bag and discarded indoors until outside disposal is possible. Reusable diapers shall be removed from the facility daily.
- (3) Diaper-changing surfaces shall be cleaned after each use by washing or by changing a pad or disposable sheeting and sanitized or covered for reuse.
- (4) Soft, absorbent, disposable towels or clean reusable towels which have been laundered between each use shall be used for cleaning the child.
- (5) Safety pins shall be kept out of reach of infants and toddlers.
- (6) Children shall not be left unattended on a surface from which they might fall.
- (7) All toilet articles shall be identified and separated as to each child and kept in a sanitary condition.
- (8) Diapering and toileting areas shall contain a wash basin that is separate from that used for food preparation.
- (9) Toilet training shall be initiated when the child is ready and in consultation with the child's parents or placement agency. There shall be no routine attempt to toilet train children under the age of 18 months.

37.95.1002 CLOTHING

- (1) Wet or soiled clothing shall be changed promptly. Parents shall provide additional clothing and it is the responsibility of the parents to care for the clothing.
- (2) If an older, toilet trained child has an accident causing wet or soiled clothes, the child shall be changed promptly.

37.95.1003 FEEDING

- (1) An individualized diet and feeding schedule shall be provided according to a written plan submitted by the parents or by the child's physician with the knowledge and consent of the parents, guardian or placement agency. A change of diet and schedule shall be noted on each child's daily diet and feeding schedule.
- (2) A day's supply of formula or breast milk in nursing bottles or formula requiring no more preparation than dilution with water shall be provided by the parents, unless an alternative agreement is reached between the parents and provider ensuring that the infant's nutritional needs are sufficiently met. Bottles of formula or breast milk shall be clearly labeled with each infant's name and date and immediately refrigerated. After use bottles shall be thoroughly rinsed before returning to the parent at the end of the day. Special dietary foods required by the infant shall be prepared by the parents.
- (3) Bottles shall not be propped. Infants too young to sit in high chairs shall be held in a semi-sitting position for all bottle feedings. Children who use a bottle should not be allowed to lie on their backs when drinking from the bottle. Older infants and toddlers shall be fed in safe high chairs or at baby feeding tables. Infants 6 months of age or over who show a preference for holding their own bottles may do so provided an adult remains in the room and within observation of the infant. Bottles shall be taken from the infant when the child finishes feeding, when the bottle is empty and while the infant is sleeping.
- (4) If the parent is unable to bring sufficient or usable formula or breast milk, the facility may use commercially prepared and packaged formulas. Older infants shall be provided suitable foods which encourage freedom in self-feeding. Unused infant food shall be stored in the original container and kept separate from other foodstuffs. Dry cereal, cookies, crackers, breads and similar foods shall be stored in clean, covered containers.
- (5) If the container in which the formula was purchased does not include a sanitized bottle and nipple, then transfer of ready-to-feed formula from the bulk container to the bottle and nipple feeding unit must be done in a sanitary manner in the kitchen. Bottles filled on the premises of the facility should be refrigerated immediately if not used and contents discarded if not used within 12 hours.
- (6) If bottles and nipples are to be used by the facility, they must be sanitized by boiling for 5 minutes or more just prior to refilling. Terminal (one-step) sterilization of bottles, nipples and formula is acceptable.

37.95.1004 BATHING

- (1) Bathing shall not be done routinely by the facility but if required:
 - (a) No child shall be left unattended in the bathing area;

- (b) Bathing materials shall be sanitized after bathing a child;
- (c) Nonallergenic soap shall be used;
- (d) Arrangements shall be made so no child can turn on hot water while being bathed. Water supply to bathing area will not be over 120° F; and
- (e) The bathing area shall be out of drafts and provisions should be made so the child may be completely dried after a bath.

37.95.1005 SLEEPING

- (1) There shall be adequate opportunities for sleep periods during the day suited to the infants' individual needs.
- (2) Unless the child's parent has provided medical documentation from health care provider ordering otherwise, infants shall be placed on their back and on a firm surface to reduce the risk of sudden infant death syndrome (SIDS).
- (3) Each infant shall be provided with a crib or play pen for sleeping until, at the discretion of the parent and provider, they are safe on a cot or mat.
 - (a) Infants shall not be routinely allowed to sleep in a car seat, infant swing or other apparatus.
 - (b) Cot or mat surfaces may be of plastic or canvas or other material, which can be cleaned with detergent solution and allowed to air dry.
- (4) Cribs shall be made of durable, cleanable, nontoxic material and have secure latching devices. Cribs shall have no more than 2 and 3/8 inches of space between the vertical slats. Mattresses shall fit snugly to prevent the infant from being caught between the mattress and crib siderail. Crib mattresses shall be waterproof and easily sanitized. Cribs, cots, or mats shall be thoroughly cleansed before assignment to another infant.
- (5) Cribs, cots, or mats shall be spaced to allow for easy access to each child, adequate ventilation, and easy exit. Aisles between cribs or cots shall be kept free of obstructions while cribs or cots are occupied. Use of stackable cribs for infants is permitted until infants reach one year of age or 26 pounds, whichever comes first.
- (6) All pillows, quilts, comforters, sheepskins, bumper pads, stuffed toys and other soft products shall be removed from the crib and play pen. If blankets are used, the infant's head shall remain uncovered during sleep.
- (7) Each infant shall have been provided by the parent with a clean washable blanket or other suitable covering for his/her use while sleeping. Each infant's bedding shall be stored separate from bedding used by other infants.
- (8) All cries of infants shall be investigated.

37.95.1011 ACTIVITIES

- (1) All infants shall have ample opportunity during each day for freedom of movement, such as creeping or crawling or rolling in a safe, clean, open, uncluttered area.
- (2) An infant who is awake shall not spend more than 30 minutes of consecutive time confined in a crib, playpen, jump chair, walker or highchair.
- (3) Each infant shall have individual personal contact and attention by the same adult on a regular daily basis at least once each hour during non-sleeping hours. Examples of personal contact and attention include being held, rocked, taken on walks inside and outside the center, talked to and played with.
 - (a) There shall be sufficient staff so that an adult is always present and supervising.
- (4) There shall be provisions for the infant to safely explore and investigate the environment. There shall be both stimulation and time for quiet activity. Infants shall be taken outside for some period during each day in good weather.
- (5) Each infant shall be allowed to maintain the child's own pattern of sleeping and waking period according to instructions from the parents.

37.95.1015 OUTDOOR ACTIVITIES

- (1) Children shall be protected from draft and prolonged exposure to direct sunlight. With the parent's permission, sun screen shall be applied to children over 6 months old when outdoor conditions dictate.
- (2) The outdoor activity area shall be adjacent to the facility, fenced and free of hazards, which are dangerous to the health and life of the children. Every time a child is outdoors, the child must be supervised by a caregiver.
- (3) Adequate protection against insects shall be provided.

(4) Provision shall be made for both sunny and shady activity areas.

37.95.1016 EQUIPMENT

- (1) Feeding tables equipped with a harness or highchairs with a broad base and a harness for securing the child, shall be provided for every four children.
- (2) The facility shall provide, adequate and safe equipment such as walkers, swings, playpens, jump chairs and adult rocking chairs. All equipment must meet current federal safety regulations.

37.95.1021 SPECIAL REQUIREMENTS FOR DAY CARE CENTERS

- (1) Day care centers shall post each infant's diet and schedule in an area clearly visible to the center's infant care staff.
- (2) Individual storage space that is labeled for the infant's clothing and other personal items shall be provided.
- (3) Each infant shall be assigned a primary caregiver. There shall be sufficient staff so that an adult is always present and directly supervising infants.
- (4) Clothing worn to and from work by the day care center staff members shall be covered by or replaced with clean comfortable non-irritating washable smock or similar clothing.
- (5) Play areas for infants shall be separate from older children's play areas, or not be used for any other group of children while being used for infants. Sleeping areas shall be separate from play areas.

FIRE RULES

23.7.109 CERTIFICATE OF APPROVAL FOR DAY CARE CENTERS FOR 13 OR MORE CHILDREN

- (1) Any applicant for a license from the department of public health and human services to operate a day care center for 13 or more children under Title 52, chapter 2, MCA, must obtain a certificate of approval from the state fire marshal in accordance with this rule.
- (2) To obtain a certificate of approval, the applicant shall submit a written application to the state fire marshal setting forth the following information:
 - (a) Name and address of applicant;
 - (b) Location of proposed day care center; and
 - (c) Number of children for which proposed day care center will provide care.
- (3) Upon receipt of an application for certificate of approval, the fire marshal or a representative shall conduct an inspection of the proposed day care center.
- (4) Day care centers shall comply with the fire code.
- (5) Day care centers shall comply with the following provisions of the building code which are hereby incorporated by reference: 1997 UBC 305.2.3, 305.3, 305.8, 305.9, chapter 8, chapter 10, 904.2.4.2, and 904.2.4.3. Copies of the building code may be obtained from the Building Codes Division, Department of Commerce, 1218 East Sixth Avenue, P.O. Box 200517, Helena, MT 59620-0517.
- (6) Day care centers shall also comply with the following additional requirements:
 - (a) A single, fixed space heater (wood, coal or fuel oil) may be used, provided it is properly installed and surrounded by a suitable barrier to prevent contact by children and is so located as to not obstruct egress. Installation shall be in accordance with the Uniform Mechanical Code.
 - (b) Portable unvented oil-fueled heating appliances are prohibited.
 - (c) No extension cords shall be used in lieu of permanent wiring. All appliance and lamp cords shall be suitably protected to prevent pulling or chewing by children.
 - (d) All unused electrical receptacles shall be properly capped.
 - (e) Every closet door latch shall be fixed so that the door is capable of being opened by a child inside the closet.
 - (f) Every bathroom door lock shall be installed to permit the locked door to be opened from the outside.
 - (g) In sleeping rooms, windows having a minimum of 5.7 square feet of clear, unobstructed opening shall be readily accessible for rescue or fire suppression. Windows shall be capable of being opened from the inside without the use of tools or special knowledge. Clear opening shall not be less than 20 inches in

width or 24 inches in height. The bottom of the window shall not be more than 44 inches from the floor.

- (h) Every day care center shall provide operational smoke detectors in locations designated by the chief. Smoke detectors shall be tested at least every 30 days and a log of such tests maintained on the premises.
 - (i) Portable fire extinguishers shall be installed and maintained in accordance with UFC Standard 10-1 or the national fire protection association's standard for portable fire extinguishers, NFPA 10 (1998).
 - (j) A telephone shall be provided for emergency notification. Emergency phone numbers shall be posted in close proximity to the telephone.
 - (k) House numbers, no less than 6 inches in height, shall be placed in such a position as to be plainly visible and legible from the street or road fronting the property. Numbers shall contrast with their background.
- (l) Space under stairwells shall not be used for storage of any kind except as permitted by UFC Sec. 1210.3 Exception.
- (7) If the proposed day care center is in compliance with these rules, the fire marshal shall issue a certificate of approval. If the center is not in compliance, the fire marshal shall issue a notice of corrective action needed to bring the center into compliance. Additional inspections may be conducted as needed until compliance is achieved.
- (8) For the purposes of this rule, the definitions contained in 52-2-703, MCA, are applicable.
- (9) Inspection of any day care facility shall be done upon receipt of a request from the department of public health and human services or as a part of an inspection performed by a fire department under other provisions of state law. Findings of any inspection conducted at the request of the department of public health and human services shall be reported to that department.

PUBLIC HEALTH REQUIREMENTS

37.95.205 SOLID WASTE

- (1) In order to ensure that solid waste is safely stored and disposed of, a day care center must:
- (a) Store all solid waste between collections in containers which have lids and are corrosion resistant, fly-tight, watertight, and rodent-proof;
 - (b) Clean all solid waste containers frequently;
 - (c) Utilize exterior collection stands for the containers referred to in (a) above which prevent the containers from being tipped, protect them from deterioration, and allow easy cleaning below and around them;
 - (d) Transport or utilize a private or municipal hauler to transport the solid waste at least weekly to a solid waste facility approved by the department in a covered vehicle or covered containers.

37.95.206 LAUNDRY

- (1) In order to ensure that soiled laundry does not endanger the health of children, a day care center must:
- (a) Refrain from storing soiled laundry in a dining, food preparation, or food storage room, and ensure that such soiled laundry is not accessible to children;
 - (b) Provide sufficient space for sorting and storing clean and soiled laundry so that clean and soiled laundry do not contact the same surface or each other;
 - (c) Machine wash all laundry at a minimum initial water temperature of 140°F and a minimum time of eight minutes, and dry all laundry in a hot air tumble dryer vented to the outside of the building;
 - (d) In regard to bedding:
 - (i) Launder bedding whenever it is soiled and air it out periodically to prevent mildew; and
 - (ii) Assure that bedding assigned to one child is not used by another until it is laundered;
 - (e) Handle reusable diapers as prescribed in ARM 37.95.210.

37.95.207 GENERAL HOUSEKEEPING

- (1) As general housekeeping measures, a day care center must ensure that:
- (a) Its building and grounds are free, to the extent possible, of harborage for insects, rodents, and other vermin;

- (b) Its floors, walls, ceilings, furnishings, and other equipment are easily cleanable and are kept clean;
- (c) Soap and disposable towels or other hand-drying devices are always available at all hand washing sinks.
Common-use cloth towels are prohibited;
- (d) Toilet tissue is provided next to all toilets;
- (e) The temperature is maintained at a minimum of 65°F in the areas used for day care;
- (f) At the end of each week of use, or more frequently as needed, toys are cleaned and sanitized in a solution containing 1/4 cup household bleach to one gallon of water or a comparable sanitizing solution, air dried after sanitizing, rinsed with clean water and air dried;
- (g) Hand sinks and bathing facilities are provided with water at a temperature of at least 100°F and not more than 120°F;
- (h) Cleaners used in cleaning bathtubs, showers, sinks, urinals, toilet bowls, toilet seats and floors, contain fungicide or germicide;
- (i) Cleaning devices for toilets, sinks, and tubs are kept separate from each other, and cleaning devices used on toilet bowls, toilet seats, or urinals, are not used for any other purpose and are kept out of the reach of children;
- (j) Dry dust mops and dry dust cloths are not used; and
- (k) Cleaning compounds and pesticides are stored separately and out of the reach of children, used, and disposed of in accordance with the manufacturer's instructions.

37.95.210 SPECIAL REQUIREMENTS FOR CHILDREN REQUIRING CRIBS OR DIAPERS

- (1) If a day care center cares for children requiring cribs or diapers, it must:
 - (a) Ensure that cribs, playpens, and toys used by those children are made of washable, nontoxic materials and are kept clean and sanitized with a solution containing 1/4 cup household bleach to one gallon water or equivalent sanitizing solution, air dried, rinsed with clean water and air dried. This must be done daily;
 - (b) Either provide separate cribs for each such child, or launder bedding in accordance with ARM 37.95.206(4);
 - (c) Have adequate facilities to bathe such children when necessary that are separate from food service, food preparation, and play or sleeping areas;
 - (d) Handle diapers in the following manner:
 - (i) Provide an adequate and cleanable area for diaper changing separate from food preparation and play areas;
 - (ii) After each diapering, thoroughly clean and sanitize the diapering area, using a solution of 1/4 cup household bleach to one gallon water or an equivalent sanitizing solution, air dry, rinse with clean water and air dry;
 - (iii) Store soiled diapers in easily cleanable or lined receptacles with tight-fitting lids in an area inaccessible to children; and empty, clean, and wash the receptacles once per day or more often as needed;
 - (iv) Refrain from dipping soiled diapers in a toilet, although fecal contents of diapers may be shaken into a toilet;
 - (v) Ensure that all staff members who diaper children wash their hands immediately after each diapering following the procedures outlined in ARM 37.95.221(7)(c). The hands of the diapered infant must also be washed; and
 - (vi) Equip diapering and toilet areas with a hand washing sink that is separated by at least six feet from the infant food preparation area, hand washing sink, and equipment used for food preparation, except if the provider submits to the local health authority a written plan which describes an alternative means that does not have the potential to cause adverse health effects.
 - (e) Request parents to provide a supply of clean clothes adequate to allow at least one change per day and adequate diapers for a day's use;
 - (f) Allow the use of non-disposable diapers. If non-disposable diapers are used, they must be handled in accordance with the following, in addition to the requirements of (d):
 - (i) Soiled diapers for each child must be placed in a plastic sack designated for that child, which in

- turn must be placed in a non-permeable, covered container and either picked up by a diaper service or commercial laundry or sent home the same day with the parent in the plastic sack;
- (ii)** Soiled diapers must either be laundered by a commercial laundry or diaper service, or at another site removed from the day care facility;
 - (iii)** If a diaper service or commercial laundry is used, soiled diapers must be picked up by the service or laundry at least twice weekly; and
 - (iv)** Soiled cloth diapers may not be rinsed on site.

37.95.214 FOOD PREPARATION AND HANDLING

- (1) The department adopts and incorporates by reference ARM Title 37, chapter 110, subchapter 2, with exceptions, which sets sanitation and food handling standards for food service establishments. A copy of ARM Title 37, chapter 110, subchapter 2 may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Food and Consumer Safety Bureau, P.O. Box 202951, Helena, MT 59620-2951.
- (2) A day care center must comply with all requirements set for food service establishments in ARM Title 37, chapter 110, subchapter 2, with the exceptions noted in this rule.
- (3) A domestic style dishwasher may only be used if it is equipped with a heating element and the following conditions are met:
 - (a) The dishwasher:
 - (i) Is capable of washing and sanitizing all dishware, utensils and food service equipment normally used for the preparation and service of a meal in one cycle;
 - (ii) Must have water at a temperature of at least 165°F when it enters the machine, if it uses hot water for sanitization;
 - (iii) If it uses a heat cycle with a heating element for sanitization, must be allowed to run through the entire cycle before it is opened;
 - (b) At least a two compartment sink is provided as a backup facility in the event the dishwasher becomes inoperable; and
 - (c) If the two compartment sink is used, all dishware, utensils, and food service equipment are thoroughly cleaned in the first sink compartment with a hot detergent solution that is kept clean and at a concentration indicated on the manufacturer's label, and sanitized in the second compartment by immersion in any chemical sanitizing agent that will provide the equivalent bactericidal effect of a solution containing at least 50 ppm of available chlorine at a temperature of at least 75°F for one minute, and air-drying before being stored.
- (4) ARM 37.110.220 and 37.110.221 do not apply to a day care center. Instead, a day care center must provide lavatories, water closets, and urinals in the ratio of the number of each to the number of individuals using them noted below, taking into account children, staff, and volunteers:

<u>Water Closets</u>		<u>Urinals</u>	<u>Lavatories</u>
Male 1:20	Female 1:20	If over 20 males, may substitute 1/2 the number of toilets required.	1:60
May combine male and female unless fixture requirement exceeds two.			

- (5) ARM 37.110.232(2) through (6) do not apply to a day care center. The food preparation area may be used as a family kitchen.
- (6) ARM 37.110.238 does not apply to a day care center, i.e., licensure as a food service establishment is not required.
- (7) ARM 37.110.239 does not apply to a day care center, since each day care center is already subject to the inspection and training requirements of 53-4-506, MCA.
- (8) Food must be obtained from sources that comply with the Montana Food, Drug and Cosmetic Act, Title 50, chapter 31, MCA, and no home canned foods may be used.
- (9) Potentially hazardous foods must be maintained at an internal temperature under 45°F or over 140°F. A food (stem) thermometer must be available to measure these temperatures.
- (10) Food that has been in family-style service containers, on the table, or in the service area must be disposed of after the meal.

- (11) Ground beef must be cooked to a minimum internal temperature of 155°F and have clear juices and a uniform brown color with no pink.
- (12) The department adopts and incorporates by reference ARM Title 37, chapter 110, subchapter 2, which sets forth requirements for food service establishments. Copies of these rules may be obtained from the Department of Public Health and Human Services, Public Health and Safety Division, Food and Consumer Safety Bureau, P.O. Box 202951, Helena, MT 59620-2951.

37.95.215 NUTRITION

- (1) The department adopts and incorporates by reference 7 CFR 226.19 and 226.20, containing meal requirements for day care facilities participating in the child and adult care food program of the US department of agriculture, food and nutrition service. A copy of 7 CFR 226.19 and 226.20 may be obtained from the department's nutrition consultant, Department of Public Health and Human Services, Public Health and Safety Division, Food and Consumer Safety Bureau, P.O. Box 202951, Helena, MT 59620-2951.
- (2) Each day care center must do the following, with the exception noted in (4):
 - (a) Serve meals and snacks which meet the requirements for meals contained in 7 CFR 226.19 and 226.20, including the following:
 - (i) Breakfast for children who are between one and 12 years old must include one serving of fruit, vegetable, or 100% fruit or vegetable juice; one serving of enriched bread or bread alternate; and one serving of fluid milk;
 - (ii) Lunch and supper for children who are between one and 12 years old must include one serving of meat or meat alternate, two vegetables or two fruits or one vegetable and one fruit, one serving of bread or bread alternate, and one serving of fluid milk;
 - (iii) Snacks for children who are between one and 12 years old must include two of the following four food components: meat or meat alternate, fruit or vegetable or 100% fruit or vegetable juice, bread or bread alternate, or fluid milk;
 - (iv) Serving sizes must be appropriate to the child's age as outlined in 7 CFR 226.19 and 226.20; and
 - (v) The specific nutritional requirements for children under one year old as outlined in 7 CFR 226.19 and 226.20 must be followed;
 - (b) Serve meals and snacks on, at a minimum, the following schedule to children in attendance:
 - (i) Snacks at mid-morning and mid-afternoon;
 - (ii) Lunch; and
 - (iii) Breakfast, before 9:00 am, or supper if a child is being cared for in the center at the normal time for those meals and has not otherwise received them;
 - (c) Ensure that each bottle-fed infant from newborn to one year of age is held upright during bottle feedings until the child is able to hold the bottle, and that bottles are not propped;
 - (d) For each child with nutritional therapeutic needs, request and carefully follow special dietary instructions, in writing, from either the child's parent or guardian, or a physician or registered dietitian, if the parent/guardian fails to or cannot provide such instructions. Food brought from home for special dietary purposes must be carefully labeled with the child's name;
 - (e) Plan menus at least two weeks in advance, date and post the menus where parents/guardians can see them, and serve meals and snacks in accordance with the posted menus, with the exception that a menu change may be made so long as it is posted before parents arrive to check in children on the date of service;
 - (f) Provide supervision to children while they eat and assist the children to eat, if necessary;
 - (g) Offer drinking water at regular intervals to infants and toddlers and ensure that drinking water is freely available to all children; and
 - (h) Keep on file at the day care center written menu records and special dietary instructions for infants and children for one year following the date of the meal service.
- (3) If a day care center does not participate in the department's child care food program, the center must do the following in addition to meeting the requirements contained in (2):

- (a) Obtain guidance materials from the department about child care food program meal requirements and adhere to the recommendations therein; and
- (b) Within one year after it begins operation, and once annually thereafter, ensure that a registered dietitian evaluates the nutritional adequacy of its meals and their compliance with this rule, and that the dietitian makes a written report, to be retained on file at the day care center, containing the following information, with a copy to the department:
 - (i) Findings and recommendations pertaining to the nutritional adequacy of food served to the children;
 - (ii) An assessment of management of meals, and any infant or therapeutic diets;
 - (iii) Date of the evaluation; and
 - (iv) Evaluator's signature and dietitian registration number.
- (4) If a parent sends food with a child for consumption at the day care center, the center need not provide meals or snacks for the child to the extent that food is provided by the parent for that meal or snack, but is required to do the following:
 - (a) Provide the child with a meal or snack meeting the requirements of (2) whenever the parent has not provided food for that meal or snack;
 - (b) Post a copy of the meal requirements referred to in (2)(a) in an area where it will be readily seen by parents;
 - (c) At least annually, provide each parent who has ever sent food to the center for consumption by a child a copy of the meal requirements referred to in (2)(a).

37.95.225 WATER SUPPLY SYSTEM

- (1) A day care facility shall provide an adequate and potable supply of water:
 - (a) Connected to a public water supply system approved by department of environmental quality; or
 - (b) If the day care facility utilizes a nonpublic water system source:
 - (i) The facility must have the water source tested prior to beginning operation and at least once each January and once each June for the total coliform bacteria and fecal coliform or E. Coli bacteria; and
 - (ii) Must provide laboratory tests results to the department as part of the licensing or relicensing process; and
 - (iii) The day care facility shall take corrective action as needed to ensure the water is safe to drink
 - (c) Prior to beginning operation, the water must be tested to determine that the maximum contamination levels for nitrate (10 milligrams per liter) and nitrate (1 milligram per liter) are not exceeded; and
 - (d) Documentation of testing must be retained on the premises for 24 months from the date of the test.
- (2) The day care facility shall have an adequate and safe sewage system:
 - (a) For sewage to be safely disposed of, the home must:
 - (i) Connect to a public sewage system approved by the department of environmental quality; or
 - (ii) If a nonpublic system is used, the day care facility must provide documentation that it has complied with sewage disposal requirements that have been adopted by the local board of health in the jurisdiction in which the day care facility is located; and
 - (iii) Repair or replace the sewage system whenever:
 - (A) It fails to accept sewage at the rate of application;
 - (B) Seepage of effluent from or ponding of effluent on or around the system occurs;
 - (C) Contamination of a potable water supply or state waters is traced to the system; or
 - (D) A mechanical failure occurs.

37.95.226 SEWAGE SYSTEM

- (1) The department hereby adopts and incorporates by reference ARM Title 17, chapter 38, subchapter 1, which provides standards for on site subsurface wastewater treatment systems. A copy may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Food and Consumer Safety, P.O. Box 202951, Helena, MT 59620-2951.

- (2) In order to ensure sewage is completely and safely disposed of, a day care center must:
- (a) Connect to a public sewage system meeting the requirements of ARM Title 17, chapter 38, subchapter 1; or
 - (b) If the day care center is not utilized by more than 25 persons daily at least 60 days out of the calendar year, including children, staff, and residents; and an adequate public sewage system is not available; utilize a non-public system whose construction and use meet the standards for such systems set by the local board of health and the construction and operation standards contained in ARM Title 17, chapter 38, subchapter 1, and incorporated by reference in (1) of this rule, with the proviso that the size of the system be determined using a rate of 20 gallons per day per child and per staff member attending the day care center, plus 75 gallons per day per resident.
- (3) A day care center must replace or repair a failed system as defined by ARM 17.36.903(6) or the local health code.

NOTE: If you have questions regarding the above regulation please contact your local sanitarian.

37.95.227 SWIMMING POOLS

- (1) In regard to swimming, a day care center must:
- (a) Allow children to use only a swimming pool which is constructed and operated in accordance with ARM Title 37, chapter 111, subchapter 11 and in accordance with ARM 37.95.127;
 - (b) Provide and utilize each day the pool is used a chlorine test kit to ensure that the required chlorine residual is present in the pool at all times or
 - (c) In the event that a portable wading pool, as defined in ARM 37.95.102, is used, add one tablespoon household bleach to 100 gallons of water to the pool on the day of use; drain, clean, and refill it with fresh water daily, and refill it with fresh water when needed. Bleach must be added any time the pool is refilled and drained.